

AMENDED IN ASSEMBLY MAY 23, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2411

Introduced by Assembly Member Bonta
(Coauthor: Assembly Member Skinner)
(Principal coauthor: Senator Leno)

February 21, 2014

~~An act to add Section 686.3 to the Penal Code, relating to eyewitness identification.~~ *An act to amend Sections 1203.067 and 3008 of the Penal Code, relating to corrections.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2411, as amended, Bonta. ~~Eyewitness identification: guidelines.~~ *Probation and parole.*

Existing law requires the terms of probation or parole for all persons placed on formal probation or parole for an offense that requires registration as a sex offender to include, among other things, participation in, or completion of, a sex offender management program, as specified. Existing law requires that the length of the period in the program be determined by a certified sex offender management professional in consultation with the probation or parole officer and as approved by the court.

This bill would require participation in the above programs to apply without regard to when the crime or crimes for which the person is on probation or parole were committed. By increasing the penalties for existing crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law governs criminal procedure, but does not regulate how law enforcement officials prepare or conduct eyewitness photo or live lineup identifications.~~

~~This bill would require the Attorney General to develop a set of guidelines governing the collection of eyewitness evidence in showups, photo arrays, and live lineups, on or before January 1, 2016. The bill would require the Attorney General to develop the guidelines by collecting and reviewing the current best practices to reduce the misidentification of persons in eyewitness lineups that are in use in this state, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.067 of the Penal Code is amended
2 to read:

3 1203.067. (a) Notwithstanding any other law, before probation
4 may be granted to any person convicted of a felony specified in
5 Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289, who is
6 eligible for probation, the court shall do all of the following:

7 (1) Order the defendant evaluated pursuant to Section 1203.03,
8 or similar evaluation by the county probation department.

9 (2) Conduct a hearing at the time of sentencing to determine if
10 probation of the defendant would pose a threat to the victim. The
11 victim shall be notified of the hearing by the prosecuting attorney
12 and given an opportunity to address the court.

13 (3) Order any psychiatrist or psychologist appointed pursuant
14 to Section 288.1 to include a consideration of the threat to the
15 victim and the defendant's potential for positive response to
16 treatment in making his or her report to the court. Nothing in this
17 section shall be construed to require the court to order an
18 examination of the victim.

1 (b) On or after July 1, 2012, the terms of probation for persons
2 placed on formal probation for an offense that requires registration
3 pursuant to Sections 290 to 290.023, inclusive, shall include all of
4 the following:

5 (1) Persons placed on formal probation prior to July 1, 2012,
6 shall participate in an approved sex offender management program,
7 following the standards developed pursuant to Section 9003, for
8 a period of not less than one year or the remaining term of
9 probation if it is less than one year. The length of the period in the
10 program is to be determined by the certified sex offender
11 management professional in consultation with the probation officer
12 and as approved by the court. *Participation in this program applies*
13 *to every person described without regard to when his or her crime*
14 *or crimes were committed.*

15 (2) Persons placed on formal probation on or after July 1, 2012,
16 shall successfully complete a sex offender management program,
17 following the standards developed pursuant to Section 9003, as a
18 condition of release from probation. The length of the period in
19 the program shall be not less than one year, up to the entire period
20 of probation, as determined by the certified sex offender
21 management professional in consultation with the probation officer
22 and as approved by the court. *Participation in this program applies*
23 *to each person without regard to when his or her crime or crimes*
24 *were committed.*

25 (3) Waiver of any privilege against self-incrimination and
26 participation in polygraph examinations, which shall be part of the
27 sex offender management program.

28 (4) Waiver of any psychotherapist-patient privilege to enable
29 communication between the sex offender management professional
30 and supervising probation officer, pursuant to Section 290.09.

31 (c) Any defendant ordered to be placed in an approved sex
32 offender management program pursuant to subdivision (b) shall
33 be responsible for paying the expense of his or her participation
34 in the program as determined by the court. The court shall take
35 into consideration the ability of the defendant to pay, and no
36 defendant shall be denied probation because of his or her inability
37 to pay.

38 SEC. 2. Section 3008 of the Penal Code is amended to read:

39 3008. (a) The Department of Corrections and Rehabilitation
40 shall ensure that all parolees under active supervision who are

1 deemed to pose a high risk to the public of committing sex crimes,
2 as determined by the State-Authorized Risk Assessment Tool for
3 Sex Offenders (SARATSO), as set forth in Sections 290.04 to
4 290.06, inclusive, are placed on intensive and specialized parole
5 supervision and are required to report frequently to designated
6 parole officers. The department may place any other parolee
7 convicted of an offense that requires him or her to register as a sex
8 offender pursuant to Section 290 who is on active supervision on
9 intensive and specialized supervision and require him or her to
10 report frequently to designated parole officers.

11 (b) The department shall develop and, at the discretion of the
12 secretary, and subject to an appropriation of the necessary funds,
13 may implement a plan for the implementation of relapse prevention
14 treatment programs, and the provision of other services deemed
15 necessary by the department, in conjunction with intensive and
16 specialized parole supervision, to reduce the recidivism of sex
17 offenders.

18 (c) The department shall develop control and containment
19 programming for sex offenders who have been deemed to pose a
20 high risk to the public of committing a sex crime, as determined
21 by the SARATSO, and shall require participation in appropriate
22 programming as a condition of parole.

23 (d) On or after July 1, 2012, the parole conditions of a person
24 released on parole for an offense that requires registration pursuant
25 to Sections 290 to 290.023, inclusive, shall include all of the
26 following:

27 (1) Persons placed on parole prior to July 1, 2012, shall
28 participate in an approved sex offender management program,
29 following the standards developed pursuant to Section 9003, for
30 a period of not less than one year or the remaining term of parole
31 if it is less than one year. The length of the period in the program
32 is to be determined by the certified sex offender management
33 professional in consultation with the parole officer and as approved
34 by the court. *Participation in this program applies to each person*
35 *without regard to when his or her crime or crimes were committed.*

36 (2) Persons placed on parole on or after July 1, 2012, shall
37 successfully complete a sex offender management program,
38 following the standards developed pursuant to Section 9003, as a
39 condition of parole. The length of the period in the program shall
40 be not less than one year, up to the entire period of parole, as

1 determined by the certified sex offender management professional
2 in consultation with the parole officer and as approved by the court.
3 *Participation in this program applies to every person described*
4 *without regard to when his or her crime or crimes were committed.*

5 (3) Waiver of any privilege against self-incrimination and
6 participation in polygraph examinations, which shall be part of the
7 sex offender management program.

8 (4) Waiver of any psychotherapist-patient privilege to enable
9 communication between the sex offender management professional
10 and supervising parole officer, pursuant to Section 290.09.

11 (e) Any defendant ordered to be placed in an approved sex
12 offender management treatment program pursuant to subdivision
13 (d) shall be responsible for paying the expense of his or her
14 participation in the program. The department shall take into
15 consideration the ability of the defendant to pay, and no defendant
16 shall be denied discharge onto parole because of his or her inability
17 to pay.

18 *SEC. 3. No reimbursement is required by this act pursuant to*
19 *Section 6 of Article XIII B of the California Constitution because*
20 *the only costs that may be incurred by a local agency or school*
21 *district will be incurred because this act creates a new crime or*
22 *infraction, eliminates a crime or infraction, or changes the penalty*
23 *for a crime or infraction, within the meaning of Section 17556 of*
24 *the Government Code, or changes the definition of a crime within*
25 *the meaning of Section 6 of Article XIII B of the California*
26 *Constitution.*

27 ~~SECTION 1. Section 686.3 is added to the Penal Code, to read:~~

28 ~~686.3. (a) This section shall be known and may be cited as the~~
29 ~~Witness Identification Accuracy Enhancement Act.~~

30 ~~(b) On or before January 1, 2016, the Attorney General shall~~
31 ~~develop a set of guidelines governing the collection of eyewitness~~
32 ~~evidence in showups, photo arrays, and live lineups.~~

33 ~~(c) The Attorney General shall develop the guidelines described~~
34 ~~in subdivision (b) by collecting and reviewing the current best~~
35 ~~practices to reduce the misidentification of persons in eyewitness~~
36 ~~lineups that are in use in California. As part of the collection and~~
37 ~~review, the Attorney General shall specifically take into account~~
38 ~~local procedures requiring that lineup administrators be neutral~~
39 ~~and independent and procedures that prohibit a person who is~~

- 1 ~~familiar with the identity of a suspect from being present while~~
- 2 ~~the lineup is conducted.~~

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